

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DIANE C. JONES,**

**Plaintiff,**

**5:11-cv-372  
(GLS)**

**v.**

**MICHAEL ASTRUE,** Commissioner of  
Social Security,

**Defendant.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

Olinsky Law Group  
300 S. State Street  
5th Floor, Suite 520  
Syracuse, NY 13202

HOWARD D. OLINSKY, ESQ.

**FOR THE DEFENDANT:**

HON. RICHARD S. HARTUNIAN  
United States Attorney  
100 South Clinton Street  
Syracuse, NY 13261

TOMASINA DIGRIGOLI  
Special Assistant U.S. Attorney

Mary Ann Sloan  
Regional Chief Counsel  
Social Security Administration  
Office of General Counsel, Region II  
26 Federal Plaza, Room 3904  
New York, NY 10278

**Gary L. Sharpe**  
**Chief Judge**

**MEMORANDUM-DECISION AND ORDER**

## **I. Introduction**

Plaintiff Diane C. Jones challenges the Commissioner of Social Security's denial of disability insurance benefits (DIB) and supplemental security income (SSI), seeking judicial review under 42 U.S.C. §§ 405(g) and 1383(c)(3). (See Compl., Dkt. No. 1 at 1.) After reviewing the administrative record and carefully considering Jones' arguments, the Commissioner's decision is reversed and remanded.

## **II. Background**

On June 20, 2007, Jones filed an application for DIB and SSI under the Social Security Act ("Act"), alleging disability beginning August 15, 2006. (See Dkt. No. 11 at 1.) After her application was denied, Jones requested a hearing before an Administrative Law Judge (ALJ), which was held on September 22, 2009. (See Tr.<sup>1</sup> at 378-407.) On April 2, 2010, the ALJ issued a decision denying the requested benefits, which became the Commissioner's final decision upon the Social Security Administration Appeals Council's denial of review. (See Tr. at 1-4, 14-23.) Jones filed a subsequent application for SSI and was awarded benefits beginning

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<sup>1</sup> Page references preceded by "Tr." refer to the consecutively-paginated Administrative Transcript in this case. (See Dkt. Nos. 9, 17.)

February 28, 2011, thereby narrowing the temporal scope of this appeal to the period between August 15, 2006 and February 28, 2011. (See Dkt. No. 11 at 2.)

Jones commenced the present action by filing a complaint on April 5, 2011, seeking review of the Commissioner's determination. (See Compl.) The Commissioner filed an answer, certified copy of the administrative transcript, and a supplemental transcript. (See Dkt. Nos. 7, 9, 17.) Both parties, seeking judgment on the pleadings, filed a brief. (See Dkt. Nos. 11, 19.)

### **III. Contentions**

Jones contends that the Commissioner's decision was arrived at through improper legal standards and is unsupported by substantial evidence. (See *generally* Dkt. No. 11.) Specifically, Jones claims that the ALJ: (1) failed to properly assess the severity of her conditions; (2) afforded insufficient weight to the opinion of her treating cardiologist; (3) improperly discounted her credibility; and (4) relied upon vocational expert testimony that was based on an incomplete hypothetical question. (See Dkt. No. 11 at 17-24.) The Commissioner counters that the ALJ employed the proper legal standards and that his decision is supported by substantial

evidence. (See generally Dkt. No. 19.)

#### **IV. Facts**

The evidence in this case is undisputed and the court adopts the parties' factual recitations. (See Dkt. No. 11 at 2-17; Dkt. No. 19 at 2-6.)

#### **V. Standard of Review**

The standard for reviewing the Commissioner's final decision under 42 U.S.C. § 405(g) is well established and will not be repeated here. For a full discussion of the standard and the five-step process used by the Commissioner in evaluating whether a claimant is disabled under the Act, the court refers the parties to its previous opinion in *Christiana v. Comm'r of Soc. Sec. Admin.*, No. 1:05-CV-932, 2008 WL 759076, at \*1-2 (N.D.N.Y. Mar. 19, 2008).

#### **VI. Discussion**

Jones contends first that the ALJ erroneously omitted consideration of her depressive disorder and carpal tunnel syndrome from the step-two severity analysis. (See Dkt. No. 11 at 18-20.) The Commissioner counters that the ALJ properly considered both conditions. (See Dkt. No. 19 at 9-10.) While the court concurs with the Commissioner on the question of depressive disorder, it agrees with Jones that remand is necessary as to

the omission of carpal tunnel syndrome.

At step two of the sequential analysis, the ALJ must “determine whether the claimant has a severe impairment.” *Christiana*, 2008 WL 759076, at \*3; see 20 C.F.R. §§ 404.1520(a)(4)(ii), (c), 416.920(a)(4)(ii), (c). The omission of an impairment at step two may be deemed harmless error, particularly where the disability analysis continues and the ALJ later considers the impairment in his residual functional capacity (RFC) determination. See *Tryon v. Astrue*, No. 5:10-CV-537, 2012 WL 398952, at \*4 (N.D.N.Y. Feb. 7, 2012); see also *Plante v. Astrue*, No. 2:11-CV-77, 2011 WL 6180049, at \*4 (D. Vt. Dec. 13, 2011).

Here, the ALJ found that Jones suffered from the following severe impairments: obesity; degenerative disc disease; arthritis; sleep apnea; and chest pain post pacemaker for sinus node dysfunction. (See Tr. at 16.) Failing to consider Jones’ alleged depressive disorder and carpal tunnel syndrome at step two, therefore, did not derail the sequential analysis. During the subsequent RFC determination, the ALJ found that Jones suffered from no psychological or emotional impairments, citing as support her own testimony to that effect. (See Tr. at 18.) Because Jones’ psychological and emotional health was assessed at the RFC stage, any

error committed by the ALJ in omitting depression at step two is rendered harmless. See *Tryon*, 2012 WL 398952, at \*4.

Unlike Jones' emotional and psychological health, the ALJ's decision is devoid of any mention of carpal tunnel syndrome. (See *generally* Tr. at 14-23). The Commissioner seeks to justify this omission by noting that Dr. Jon Loftus did not definitively diagnose Jones with carpal tunnel syndrome, but instead merely indicated the possibility that she suffered from a "mild" form of the condition. (See Dkt. No. 19 at 10.) While such a fleeting mention may justify omission, the Commissioner fails to note that consultative physician Kalyani Ganesh—whose opinion was afforded great weight by the ALJ, (see Tr. at 20)—also indicated that Jones suffered from "left carpal tunnel syndrome," which caused her hand to go numb when she performed activities "such as braiding hair or holding mail." (Tr. at 342.) Furthermore, at her hearing, Jones told the ALJ that she no longer crochets because, as a result of her carpal tunnel syndrome, her "hand starts to go numb." (Tr. at 396.) Accordingly, the ALJ's failure to consider Jones' alleged carpal tunnel syndrome—either at step two or in the RFC analysis—requires remand. Because Jones' additional contentions relate to purported errors at later stages of the sequential analysis, it would be

premature of the court to address them at this juncture. *See Christiana*, 2008 WL 759076 at \*3.

## **VII. Conclusion**

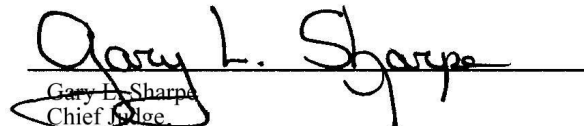
**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that the decision of the Commissioner is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for proceedings consistent with this Order; and it is further

**ORDERED** that the Clerk close this case and provide a copy of this Memorandum-Decision and Order to the parties.

**IT IS SO ORDERED.**

June 13, 2012  
Albany, New York

  
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Gary L. Sharpe  
Chief Judge  
U.S. District Court